# Enhancing anti-corruption strategies in promoting good governance and sound ethics in the South African public sector

*Tryna van Niekerk & Basie Olivier*
*School of Government Management*
*Central University of Technology, Free State*
*BLOEMFONTEIN*

*edwardst@cut.ac.za*

## Samevatting

*Korrupsie is nie alleen 'n kritiese bedreiging vir die lewering van basiese dienste nie, maar put ook die staat se hulpbronne uit en ondermyn ontwikkelings- en groei inisiatiewe. Dit verweer die regsorde, die demokratiese etos, en hou 'n ernstige bedreiging in vir goeie regering in die Suid-Afrikaanse openbare sektor. Nieteenstaande allerlei pogings om korrupsie te bekamp word verskeie insidente gerapporteer van tenderongerymdhede, vrugtelose en vermorste besteding, omkopery, bedrog en die misbruik van staatsvoertuie, asook ongerymdhede met verkrygings- en aanstellingsprosedures. Meganismes om korrupsie te beveg, is slegs die een kant van die muntstuk, en moet gekoppel word aan die profiel van goeie regering. Hierdie artikel verskaf 'n oorsig van internasionale modelle en die oorgang van 'n korrupte staat na goeie regering, gevolg deur 'n bespreking van nasionale modelle om goeie regering te bevorder en die institusionele pogings om korrupsie hok te slaan. Verder word 'n oorsig verskaf oor die prestasie van die Suid-Afrikaanse openbare sektor en wat die toekoms vir goeie regering inhou.*

## 1. Introduction

The South African government has a duty to promote the democratic values and principles enshrined in section 195 of the Con-

stitution, 1996 (the Constitution), which will in turn lead to effective and efficient service delivery and the promotion of good governance. This requires that all employees in the public sector should behave in an ethical, professional and accountable manner and perform their duties with integrity. A useful starting point towards defining good governance is provided by the King III Report on Corporate Governance as cited in Edwards (2007:48) that emphasised the primary characteristics of good governance, namely commitment to promote ethical behaviour, transparency, avoidance of conflict of interest, accountability, fairness, and responsibility. One could argue that while good governance refers to the ideal of any government, corruption is like a cancer that destroys good governance to the detriment of the society as a whole. The textbook definition of corruption refers to the use of public office for private gain (Madonsela, 2010:1). A broader definition of corruption is given in The Public Service Anti-Corruption Strategy (2002:10) that defines corruption as "any conduct or behaviour in relation to persons entrusted with responsibilities in public office, which violates their duties as public officials, and which is aimed at obtaining undue gratification of any kind for themselves or for others". Madonsela (2010:4) argues that corruption was deeply rooted in the previous apartheid regime and that the inherited bureaucracy was corrupt. Under the new dispensation the South African government has stepped up its anti-corruption initiatives, with emphasis on appropriate legislative frameworks, policy measures, anti-corruption strategies, the establishment of numerous anti-corruption agencies and anti-corruption programmes. Although government put in place numerous pieces of legislation and even anti-corruption strategies, it would appear that government commits itself to the fight against corruption mostly on paper and in speech in that many cases of fraud, theft, misappropriation and gross negligence that involved bribery are reported in the mass media.

Webb (2008:596) is of the opinion that corruption does not only hamper service delivery, but it also has a number of negative consequences. It contributes to lower levels of investment and growth, and discourages foreign direct investments and encourages business to function in the unofficial sector in violation of tax and regulatory laws. Kroukamp (2006:208-209) is of the opinion that some of the major contributors to corruption in the South African public sector have been, amongst others, unauthorized,

irregular and wasteful expenditure, entrepreneurial politics, inadequate controls, inefficiency, lenient penalties by presiding officers of misconduct inquiries, low conviction rates by courts, mistrust of the government by the citizens and the waste of public resources. Some secondary factors that contribute to corrupt acts are low salaries, global economic pressures and socio-economic imbalances, lack of work ethics, lack of commitment and discipline, greediness and a lack of effective leadership by senior officials (Mahlaba in Kroukamp, 2006:209). Directly linked to this statement is the issue of public sector ethics and the moral requirements of public servants. Pauw, Woods, Van der Linde, Fourie and Visser (2009:340) raise concerns such as the personal morality of public officials, codes of conduct and the principle of what is permissible and not permissible in public life. Pauw, Woods, Van der Linde, Fourie & Visser (2009:344) also points out that corruption is the order of the day if institutions are not managed effectively; the policy and regulatory framework is flawed in the sense that it does not prevent acts of dishonesty; and oversight institutions such as the Standing Committee on Public Accounts and the Public Protector, are not allowed to fully perform their functions. The authors' last point is that if there is no culture of work ethics in an institution, corruption will flourish.

This article argues that although South Africa does not follow a single-agency approach, the government can learn a great deal from the critical factors that contribute to the success of inter-national anti-corruption models to strengthen the capacity of the South African multi-anti-corruption agencies in their fight against corruption. The article further argues that the South African government should seriously investigate the possibility of establishing an effective single anti-corruption agency in that the current multi-agency approach is not very effective in combating corruption. This article contains an analysis of selected literature, reports and legislation. An overview of international models of transition from corruption to good governance is provided, followed by a discussion about the national mechanisms to promote good governance and institutional attempts to fight corruption. Furthermore, it provides an overview of how the South African public sector performs in dealing with corruption and the proposed way forward.

## 2. An overview of international anti-corruption models of transition from corruption to good governance

One of the major challenges facing countries all over the world is the fact that there is a general lack of trust in government, and government on the other hand is trying to ensure the citizenry that public officials will not use their positions to enrich themselves (Mafunisa, 2007:260). In an effort to stem the tide of corrupt activities, different models have been developed and implemented, although with mixed success. Considering the various anti-corruption models worldwide, the following categories exist:

- **Multi-purpose agencies with law enforcement powers.** These anti–corruption agencies with a single-agency approach have the prevention and investigation of corruption as their main aim. In most of these agencies prosecution remains a separate function. This model exists in juris-dictions such as Hong Kong's Universal Model, Singapore's Investigation Model, Australia's New South Wales Parliamentary Model and Botswana's Universal Model (Klemenčič & Stusek, 2006:22; Meagher & Voland, 2006:5).
- **Law enforcement agencies.** This is the most common model applied in Western Europe with a focus on the detection, investigation and prosecution of corruption. Examples of this model include the Central Office for the Repression of Corruption in Belgium and Spain's Special Prosecutors Office for the Repression of Economic Offences Related to Corruption (Klemenčič & Stusek, 2006:22; Meagher & Voland, 2006:5).
- **Preventative, policy development and co-ordination agencies.** The focus of this model is on corruption prevention that includes monitoring and coordination, the implementation of anti-corruption strategies, research concerning corruption, the elaboration and implementation of codes of ethics. The Central Vigilance Commission in India and the Office of Govern-ment Ethics in the United States are examples of this model (Klemenčič & Stusek, 2006:22; Meagher & Voland, 2006:5).

### 2.1 International anti-corruption models

South Africa can learn a great deal from the factors that contribute to the success and experiences of the international anti-corruption agencies or

models to combat corruption effectively. The following best-known international models of anti-corruption agencies are presented below.

### 2.1.1 Hong Kong's Universal Model

The well-known single anti-corruption model, namely the Hong Kong Independent Commission Against Corruption (ICAC) was established in 1974. As a result of the success of the Hong Kong Independent Commission Against Corruption, Hong Kong is ranked as one of the least corrupt jurisdictions in East Asia. The ICAC has the mandate to investigate any allegations of corruption and forward evidence to prosecutors. It established three functional departments to combat corruption and has numerous oversight committees to strengthen the credibility of the agency. Firstly, the Operations Department investigates alleged violations of laws and regulations. Secondly, the Corruption Prevention Department is responsible for identifying corruption prevention strategies as well as for conducting research on corruption. Thirdly, the Community Relations Department is responsible for building awareness of the dangers of corruption and for making the public aware of corruption-related laws and regulations. The Hong Kong ICAC has built up an impressive record of investigations that have resulted in numerous convictions. (Klemenčič & Stusek, 2006:33-38; Camerer, 1999:2-3; Heilbrunn, 2004:3-5; Pillay, 2004:597).

### 2.1.2 The New South Wales, Australia, Parliamentary Model

As a result of the success of the Hong Kong ICAC, in the 1980s the New South Wales Parliament in Australia decided to establish the New South Wales Independent Commission Against Corruption to combat corruption. Despite the fact that the ICAC has conducted numerous successful prosecutions, its main focus is on the prevention of corruption. This anti-corruption agency consists of four operational units to strengthen its combat against corruption, namely:

- The Investigation Unit is responsible for conducting investigation analysis and assessments of alleged incidents of corruption.
- The Legal Unit is responsible for providing legal advice on operations; it reviews on-going investigations and drafts information for the Parliamentary Joint Committee.

- The Corruption Prevention, Education and Research Unit focuses on corruption prevention, education, research and relations with the media.
- The Corporate and Commercial Service Unit is responsible for providing information through its information technology and information services and other branches.

The ICAC strengthens its fight against corruption by adopting specific prevention principles as the basis of corruption intervention (Heilbrunn, 2004:7-9; Meagher & Voland, 2006:9-10).

### 2.1.3 Singapore's Investigation Model

The well-known Corrupt Practices Investigation Bureau (CPIB) was established in Singapore during the 1950s and later reorganised in the 1970s to concentrate the agency's activities on investigation and enforcement to combat corruption. This anti-corruption agency submits reports to an Anti-Corruption Advisory Committee that reports directly to the President. Since its inception corruption in the public sector has declined drastically with each consecutive year (Klemenčič & Stusek, 2006:40-44; Heilbrunn, 2004:5-7).

### 2.1.4 The United States Multi-Agency Model

In 1977 the United States established a multi-agency approach to fight bureaucratic corruption through the Office of Government Ethics. The mandate of the Office of Government Ethics is to deter conflicts of interest by disseminating information on laws and regulations that govern public sector employment. On the one hand it promotes high ethical standards for employees and strengthens the public's confidence that official business is conducted with integrity. On the other hand the Office of Government Ethics enforces laws that define conflicts of interest and specify penalties for violations. Although it does not have any investigative functions, it aims to inform public officials about actions that might represent potential conflicts of interest (Heilbrunn, 2004:9-10).

### 2.1.5 The Botswana Universal Model

The Directorate on Corruption and Economic Crimes (DCEC) was established in 1994. The mandate includes the investigation, pre-vention and even the education of the public on all issues related to economic crimes and corruption. It is an independent agency that

provides community outreach programmes to public and private sector actors about the cost and impact of corruption. However, it has no role in the prosecution of corruption cases but evidence is forwarded to the judicial authorities (Heilbrunn, 2004:10-11; Klemenčič & Stusek, 2006:22).

Although some of the above-mentioned models are regarded as effective models by some international experts, some scholars argue that they have only limited applicability and likelihood of success in other jurisdictions (Meagher & Voland, 2006:8). However, there are certain critical success factors as cited by Klemenčič and Stusek (2006:26) and Meagher and Voland (2006:10) that contribute to their success that should be taken into account to strengthen South Africa's multi-agency anti-corruption system, namely:

- **Cross-agency coordination.** The effectiveness of an anti-corruption agency depends on the effective coordination between all of the anti-corruption mechanisms.
- **Powers.** A successful anti-corruption agency should have strong prevention of corruption capabilities, as well as a strong research capability, along with a comprehensive investigatory authority.
- **Focus.** An effective anti-corruption agency needs to be strategic in defining its focus in that the mandate should not be unlimited. An agency could focus on prevention and on monitoring a government's anti-corruption policy.
- **Accountability and independence.** The placement and reporting responsibility of an agency ensures its independence whereas accountability can be assessed in terms of the legal standards to which it is held.
- **Competent staff.** The success of an anti-corruption agency depends to a large extent on competent staff with specialised competencies and skills.
- **Resources.** Although adequate resources are an important factor there is no guarantee of success in that the Hong Kong and Singapore experience showed that budget and staff alone may not be that critical for the success of an anti-corruption agency.

- **Complementary institutions and complementary legislation.** Any successful anti-corruption agency has to operate in an environment characterised by effective laws, regulations, procedures and judiciary.
- **Other factors.** Other factors include political stability, public order, legislation that supports freedom of expression and an environment where corruption is not entrenched in the whole government system. The absence of the above factors in many of the developing countries undermines anti-corruption initiatives and the promotion of good governance (Meagher & Voland, 2006:10).

In the light of the above, Meagher and Voland (2006:8-9) confirm that the effectiveness of an anti-corruption agency depends on a set of well-defined support mechanisms such as an anti-corruption strategy, performance measurements, and a strong political will to combat corruption. This means that the performance of an anti-corruption agency depends on the specific functions and responsibilities of the agency and the results achieved in the fight against corruption.

With regard to the above, there has been a debate about whether South Africa should follow a single anti-corruption agency approach such as Hong Kong's ICACC that has been adopted in a number of countries such as Singapore, Australia and Botswana (Public Service Commission (PSC), 2011:403; Camerer, 1999:38; Pillay, 2004:597). However, Meagher and Voland (2006:8) further argue that experiments in other countries with the well-known model developed by Hong Kong's ICAC have shown that success in one country does not mean that the same model will produce positive results elsewhere. The Public Service Commission (2011:403) states that although there are ongoing efforts to improve the criminal justice system, the South African government does not have the institutional foundation in place to adopt a single anti-corruption model such as Hong Kong's ICAC. Despite this, South Africa can learn a great deal from the various anti-corruption models to strengthen its own multi-agency anti-corruption approach to combat corruption effectively. Attention will subsequently be focused on the legislative framework and anti-corruption institutions, agencies and bodies in South Africa.

## 3. Legislative framework and anti-corruption institutions, agencies and bodies in South Africa in context

According to Labuschagne and Els (2006:31) corruption has all the characteristics of organized crime and resembles money laundering. The Institute for Security Studies (Labuschagne & Els, 2006:31) advises that the same measures that are put in place to combat organized crime and money laundering should simultaneously be applied to address corruption.  South Africa follows a multi-agency anti-corruption approach that includes a comprehensive legislative and regulatory framework to combat corruption.  In an assessment conducted by the Anti-Corruption Forum (2008:2) the report showed that the country has a well-developed legislative framework aimed at fighting corruption.  The legislative and regulatory framework consists of the key institutions, sectors, laws, policies, practices and specific mechanisms that collectively contribute to enhancing good governance (Anon, 2009:14-22).  The Public Service Anti-Corruption Strategy was approved by Cabinet in 2002 and serves as the blueprint to combat corruption in the public service.  Furthermore, a Local Government Anti-Corruption Strategy (LGACS) to investigate and prevent corruption at the local sphere was established in 2006.  South Africa is functioning in a global environment and has to take cognisance of international trends of how to deal effectively with organised crime, money laundering and corruption and has adopted a specific legislative framework since 1994 to address these issues.

The post-1994 legislative framework includes the following:
- The Public Service Act, 1994 as amended by Act 30 of 2007
- The Executive Members Ethics Act, 1998 provides for the code of ethics for governing the conduct of members of Cabinet, Deputy Members of provincial Executive Councils.
- The Prevention of Organised Crime Act, 1998 (Act 121 of 1998)
- The National Prosecuting Authority Act, 1998 (Act 32 of 1998)
- The Public Finance Management Act,  1999 (Act 1 of 1999) The Protected Disclosures Act,  2000, (Act 26 of 2000) Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)
- The Promotion of Access to Information Act, 2000 (Act 2 of 2000)

- Financial Intelligence Centre Act, 2001 (Act 38 of 2001)
- Municipal Finance Management Act, 2003 (Act 56 of 2003)
- Prevention and Combating of Corrupt Activities Act, (Act 12 of 2004)
- The Public Service Regulations, 2001 (As amended).

It is thus evident that a diverse set of legislative and policy guidelines exist to direct the anti-corruption and ethical behaviour of public functionaries in the South African public sector in one way or another. While it is generally accepted that the necessary legislation to promote anti-corruption strategies, professionalism, ethics and accountability in the public sector exist, the lack of enforcement as cited by Visser, (2006:3) is often a challenge. The real challenge lies with the level of implementation, enforcement and compliance with the above legislation and policy guidelines. The South African National Anti-Corruption Agencies are *inter alia* addressed in this exposition.

## 3.1 South African National Anti-Corruption Agencies

The successful implementation and application of the national anti-corruption framework is largely dependent on an effective institutional capacity. South Africa, unlike other countries, does not have a single anti-corruption agency with the mandate to investigate, arrest and prosecute corrupt activities. Instead, numerous anti-corruption agencies have been established since 1994 to combat corruption (Mgijima, 2010:4).

The following national anti-corruption agencies are responsible for the investigation and prosecution of persons charged with corruption, the recovery and taxation of assets and the proceeds of corruption, and the prevention of corruption:
- **The South African Police Service (SAPS).** The South African Police Service investigates corruption through the Commercial Crimes Unit, the Organised Crime Units, and the Detective Branch. The former Anti-Corruption Unit was disbanded and the Organised Crime Units and the Detective Branch are responsible for investigating corruption (DPSA, 2003:46).
- **Special Investigating Unit (SIU).** The Special Investigating Unit was established in 2001 with the mandate to investigate cases of alleged corruption, fraud and maladministration

within the public service and it assists the government in recovering money lost as a result of unlawful or corrupt activities. The unit does not have the power to arrest or prosecute suspects, but instead it cooperates with the National Prosecuting Authority (NPA) and the Asset Forfeiture Unit (AFU) to ensure that prosecutions take place (DPSA, 2003:49; DPSA, 2008:16). Mgijima (2010:4-5) cited that since the inception of the Special Investigating Unit there has been a notable achievement in the fight against corruption, which includes the removal of over 81 000 fraudulent social grant claimant payments.

- **Directorate of Priority Crimes (DPC).** A former anti-corruption agency, the Directorate of Special Operations (DSO), known as the "Scorpions" was established to address syndicated crime and complex corruption. Its investigations led to the conviction of key directors in the business world of organized boardroom corruption in the public and private sector. The DSO or known as the "Scorpions" was disbanded and replaced by the DPC or the "Hawks" (Mgijima, 2010:4-5). However, on 17 March 2011 the Constitutional Court ruled that the legislation disbanding the Scorpions was essentially invalid and that it does not give the "Hawks" enough independence in their investigations. The Constitutional Court gave Parliament 18 months to amend the legislation; otherwise it will be declared unconstitutional (News24, 17 March 2011).

- **Asset Forfeiture Unit (AFU).** This unit falls under the National Prosecuting Authority (NPA) and was established in 1999 with the mandate to take cases of organized crime and money laundering to court under Chapter 5 and 6 of the Prevention of Organised Crime Act, 1998 (Madonsela, 2010:10). The unit had success in several cases against drug dealers, smugglers as well as commercial fraudsters. Over the last ten years the Asset Forfeiture Unit made a significant impact on crime and corruption and to date has frozen assets to the value of more than R3,35 billion in more than 1 700 cases. (Anon, 2010:12; DPSA, 2003:48; Manyathi, 2012:6).

- **The National Intelligence Agency (NIA).** This agency is mandated by the National Strategic Intelligence Act, 1994 to

- proactively and impartially manage and provide the government with domestic intelligence and counterintelligence. It is responsible for the collection and analysis of intelligence, which has a bearing on corruption. The NIA regards corruption in the public service as a threat to national security (DPSA, 2003:48).
- **The South African Revenue Service (SARS).** SARS is mandated to collect all revenues due to the state, and to ensure maximum tax compliance and provide a custom service. It also has an Anti-Corruption Unit which is responsible for coordinating investigations and which cooperates with law enforcement agencies concerning tax and customs corruption. The SARS adopted a zero-tolerance approach to internal fraud and corruption.
- **Independent Complaints Directorate (ICD).** The ICD was established in terms of the South African Police Service Act, as amended in 2008, and functions independently. It is mandated to investigate criminal acts, including corruption and misconduct by members of the South African Police Service and Municipal Police Service (Madonsela, 2010:9).

The following anti-corruption institutions also referred to as constitutional institutions, are responsible for non-criminal investigations and the prevention of corruption:

- **The Public Protector.** The Public Protector is a constitutional institution established in terms of Chapter 9 of the Constitution to combat corruption and to promote good governance of the various agencies that were established. The broad mandate focuses on the investigation and correcting of improper and prejudicial conduct in state affairs and its power and is the sole agency for enforcing the Executive Members Ethics Act, 1998 and the Executive Ethics Code. The Public Protector's role in anti-corruption is also recognized in the Prevention and Combating of Corruption Act, 2004 and the Protected and Disclosures Act, 2000 and the Public Finance Management Act, 1999 (Madonsela, 2010:9; DPSA, 2003:50-51).
- **The Auditor-General South Africa (AGSA).** The AGSA was established in terms of Chapter 9 of the Constitution and

appointed in terms of section 6 of the Public Audit Act[1], 2004 with the mandate as a constitutional institution to audit and report on the accounts, financial statements and financial management of all national and provincial government departments, all municipalities and other institutions required by national or provincial legislation to be audited. The AGSA enables oversight, accountability and good governance in the public sector. Furthermore, the AGSA collaborates with the law enforcement agencies when there is a need to initiate a criminal investigation and prosecution as the result of an audit. Although the AGSA is accountable to Parliament only, the reports of the AGSA are considered by the Standing Committee on Public Accounts (SCOPA). SCOPA fulfils a major role in the control of economic crime in South Africa, including the prevention of corruption (DPSA, 2003:50; Madonsela, 2010:10; Anon, 2011:3).

- **The Public Service Commission (PSC).** Another anti-corruption organ of state established in terms of Chapter 10 of the Constitution is the PSC with a very specific constitutional mandate to promote a high standard of professional ethics in the public service and to investigate, monitor, and evaluate the organisation and administration and personnel practices of the public service. The PSC fulfils a central role in the development of the Code of Conduct for the public service that forms the cornerstone of the public service's integrity framework as it sets standards for ethical conduct. Similarly, it exemplifies the spirit in which public officials should perform their duties, and points out what should be done to avoid conflicts of interest. The PSC also proposes a Conflict of Interest System in the Public Service, which not only provides standards but also promotes integrity in government by preventing conflicts of interest before they occur. It also developed the Public Service Pledge, which is signed by Directors-General as a commitment to serve with the highest standard of loyalty, respect, dignity and integrity. The National Anti-Corruption Hotline (NACH) was established in 2004 with the aim to enable citizens to report acts

---

1   The Auditor-General Act, 1995, was repealed in whole by the Public Audit Act, 2004.

of corruption in the Public Service without fear of victimization as the hotline offers anonymity. Another important initiative was the establishment of the National Anti-Corruption Forum (NACF) which comprises of the business, civil society and the government sectors. As part of Government's expressed commitment to fight corruption, Government is represented by a number of government departments on the NACF and the PSC serves as the secretariat of the NACF (Anon, 2012:1-2). Another initiative, the Financial Disclosure Framework, was implemented in 2000 for members of the senior management service in terms of Chapter 3 of the Public Service Regulations, 2001. The Financial Disclosure Framework is informed by section 196 of the Constitution and focuses on the promotion and maintenance of a high standard of professional ethics. (Mgijima, 2010:5-6; Madonsela, 2010:11-12; DPSA, 2003:52).

Other anti-corruption bodies include the following:

- **Anti-Corruption Forum (NACF).** The NACF was established in 2001 and consists of representatives of the government, business sector and civil society in order to advise the government on its approach towards combating corruption. The PSC was instrumental in the establishment of the NACF and serves as its secretariat. The NACF experienced some challenges which led to a break in activities during 2002. Since then the NACF has been revived and was responsible for the launch of three of the four National Anti-Corruption Summits since its inception. As a result the National-Anti Corruption Programme (NAP) was developed in 2005, aimed at coordinating the key challenges and projects. A further impact will be felt if the NACF is to extend its reach to the level of local government where service delivery takes place (Mgijima, 2010:6; Anon, 2011:3).
- **Anti-Corruption Inter-Ministerial Committee.** Another successful anti-corruption initiative is the Anti-Corruption Inter-Ministerial Committee that was established in 2009, which is responsible for rooting out public sector bribery and corruption. One of the tasks of the Ministerial Committee is to ensure that actions are taken against all persons engaged

in corrupt practices involving public funds as reported in the PSC (Mgijima, 2010:4-5).

- **Anti-Corruption Coordination Committee (ACCC).** This anti-corruption body is an intergovernmental structure with the objective to ensure that full coordination and integration of anti-corruption initiatives in the public service takes place. It does not carry out corruption investigations but the committee is responsible for learning programmes such as the Anti-Corruption Learning Network. The committee is also resposible for overseeing and monitoring the implementation of the public service anti-corruption strategy (Madonsela, 2010:11).

All investigations of corruption have to be referred to the judicial authorities for criminal prosecutions. In November 1999 the Specialised Commercial Crimes Court (SCCC) was established to increase the capacity of the judiciary and its functions in Johannesburg, Durban, Port Elizabeth, Cape Town, Bloemfontein and East London (DPSA, 2003:55; Mgijima, 2010:5). The SCCC are responsible for dealing with complex commercial crime cases including corruption and are composed of specialist prosecutors and investigators of the National Prosecuting Authority. The SCCC, which conduct investigations, prosecutions and adjudication under one roof, boast a 95% conviction rate since their inception (DPSA, 2003:55; Mgijima 2010:5-6).

Another independent non-profit organisation, namely Corruption Watch, was established in 2012 by the Congress of South African Trade Unions (COSATU) to combat corruption. It serves as an online whistle-blowing website. The public can use the website to post information about corrupt activities. Corruption Watch will gather, analyse and disseminate the information and will decide which incidents to investigate further and which to pass on to the relevant authorities (Manyathi, 2012:6-7; Cape Argus, 27 January 2012).

In the light of the above it is clear that South Africa has a number of national anti-corruption agencies to combat corruption and to promote good governance. However, it seems that the South African anti-corruption legislative and regulatory framework does not function optimally. Anon in Gauteng Anti-Corruption Strategic Framework (2009:14-22) pointed out that inefficiencies are caused

by overlaps within and between institutions with anti-corruption mandates. Other reasons include the ineffective application of the disciplinary system, and underdeveloped management capacity in some areas. The concealment of corruption activities and acts by public employees also contributes directly to the increase in levels of corruption in the South African government.

A report by the PSC (2001:3) revealed the following areas of overlap between the agencies: the work done by the AGSA, the PSC and the SIU. Functions of the ICD overlap with those of the South African Police Service Anti-Corruption Unit, and the SIU overlaps to some extent with the AFU and the Public Protector's functions. The report further highlighted another concern, namely that dealing with corruption is not primarily the function of the numerous anti-corruption agencies except for the SIU and the South African Police Service Anti-Corruption Unit.

Ruhiiga (2009:1094) mentioned that a survey conducted by a panel of experts on corruption in South Africa showed that in spite of a concerted effort to combat corruption, several constraints hamper the effective performance of anti-corruption agencies. These constraints include the failure of national departments to submit reports on financial misconduct. Other restrictions include the failure to allocate adequate resources to combating corruption; the absence of baseline data on the nature and extent of corruption hampers attempts to construct a regional profile; and the lack of political will to fight corruption, especially when high profile figures are involved in corruption itself (Ruhiiga, 2009:1094). This was confirmed by the Overview of Financial Misconduct Report of 2006/2007 of the PSC that states that 13 out of 39 national departments submitted nil returns. A nil return indicates that no cases of financial misconduct were finalised during the financial year. Of the 109 provincial departments, 38 submitted nil returns during the Financial year 2009/2010 (PSC, 2011:ix). In the meanwhile numerous cases of fraud, theft, misappropriation and gross negligence that involved bribery appeared in the mass media.

Pillay (2004:597) argues that a single anti-corruption agency is needed due to the very low efficiency of the existing anti-corruption agencies, the supervisory law enforcement and court structures and the lack of public trust in them. Whereas, Anon (2011:404) argues that the current system of multi-anti-corruption agencies provides

checks and balances that are essential in the South African context and it should be strengthened. Many of the anti-corruption agencies have imbalanced implementation and overlapping mandates that affect the effectiveness as well as the enforcement of the anti-corruption legal framework. While it is generally accepted that the necessary legislation and regulatory framework exist to combat corruption, the lack of enforcement and effective implementation is commonplace. Therefore, one can argue that the South African government should seriously investigate the possibility of establishing an effective single anti-corruption agency as the current multi-agency approach is not very successful in combating corruption. An overview of how the South African public sector performs in dealing with corruption should be undertaken in order to solicit a satisfactory answer.

## 4. How does the South African public sector perform in regard to dealing with corruption?

The image of a government depends upon the ethical conduct of political leaders and public officials and the perceptions of the public with regard to acceptable behaviour and standards of service delivery. It is, therefore, important that politicians and public officials at all spheres of government act in an ethical manner that displays integrity, honesty, transparency and accountability (Vyas-Doorgapersad, 2010:412). A survey conducted by the UN Interregional Crime and Justice Research Institute showed that levels of corruption in South Africa increased two-fold from 1993 to 2000 (Anon in Gauteng Anti-Corruption Strategic Framework 2009:22). Similarly, the Department of Public Service and Administration conducted surveys of public officials, senior officials in the provincial and local government sphere, and citizens in Gauteng, the Free State and KwaZulu-Natal during 2003 aimed at measuring the level of corrupt practices within the public sector as well as how corruption impacts on service delivery in the country. The majority of senior officials surveyed acknowledged that corruption was problematic in their departments. A total of 915 (91%?) of the respondents in KwaZulu-Natal, 78% in the Free State and 72% in Gauteng acknowledged that they considered corruption to be widespread amongst officials and that it had a negative impact on service delivery. The surveys showed that the following factors

contributed to high levels of corruption, namely inadequate internal control, insufficient security measures, low salaries, inefficiency of the criminal justice system, and a lack of discipline and integrity amongst public officials.  The surveys provide a useful indication of government's inability to combat corruption effectively and how it impacts on service delivery (DPSA, 2008:9-12).

According to the Transparency International Corruption Index (Online), in 2007 South Africa  was rated 43 out of 180 countries and in 2008, 54 out of 180 developed countries and in 2011,  64 out of 180 developed countries.  Furthermore, a media report stated that the total amount of unauthorized, irregular and wasteful expenditure by municipalities increased  by 77% in 2010, which resulted in a total loss of  R9,2 billion (Slabbert, *Volksblad*, 30 June 2011).  It is also a concern to note that there is a "sharp decline" in the government's responsiveness to corruption cases.  Tolsi (2010) quoted the PSC by indicating that 1 430 cases were reported in 2009/10 but there was feedback on only 150, compared with 507 responses (25%) to 1 857 cases in 2008/09.

Apart from the above, the latest report of the PSC, *Report on Financial Misconduct for the 2009/2010 Financial Year* (2011:xi-xii) states that a total number of 1 204 cases of financial misconduct were reported for that financial year.   It reflects 260 cases reported by national departments and 944 cases by provincial departments.  1 204 financial misconduct cases were finalised[2] in the 2008/2009 financial year, and 1 135 employees were finalised in the 2009/2010 financial year. Although this indicates a decline in finalised cases from 2008/2009 to 2009/2010, the cost of financial misconduct increased by 346,1% in the 2009/2010 financial year. It is, however, a disturbing fact that only 26% of the finalised cases were referred for disciplinary or criminal proceedings to be instituted (PSC, 2011:xii).

The total cost emanating from unauthorized, irregular, fruitless and wasteful expenditure as well as losses resulting from criminal conduct reported was R100 111 076,82 while only R9 946 013,83 (9,9%) of the total cost was recovered from the employees found

---

2    Finalised means the investigations into financial misconduct cases have been finalised, but still have to be referred for disciplinary or criminal proceedings.

guilty of financial misconduct or the financial misconduct did not result in any loss to the state. The PSC's, Report on Profiling and Analysis of the Most Common Manifestations of Corruption and its Related Risks in the Public Service (2011:12) illustrates in table 1 below the eleven categories of corruption followed by the number of occurrences of each of the categories in the period from 01 September 2004 to 31 June 2010.

**Table 1**. Eleven categories of corruption in the Public Service in the period from 01 September 2004 to 31 June 2010.

| Categories of corruption | Number of occurrences | Percentages |
|---|---|---|
| Fraud and bribery | 1 511 | 19% |
| Mismanagement of government funds | 870 | 11% |
| Abuse of government resources | 985 | 13% |
| Procurement irregularities | 720 | 9% |
| RDP Housing | 450 | 6% |
| Appointment irregularities | 627 | 8% |
| Social grant fraud | 420 | 5% |
| Identity document fraud | 781 | 10% |
| Unethical behaviour | 580 | 8% |
| Criminal conduct | 512 | 7% |
| Other | 310 | 4% |
| Total | 7 766 | 100% |

Table 1 shows that the five most common manifestations of corruption in the South African Public Service are fraud and bribery, mismanagement of government funds, abuse of government resources, identity document fraud and procurement irregularities. Other forms of corruption that raise concern are tender irregularities and incidents of abuse of government-owned vehicles as well as procurement irregularities (The PSC Report on Profiling and Analysis of the Most Common Manifestations of Corruption and its Related Risks in the Public Service, 2011:12). Thus, ongoing reports of tender irregularities, incidents of continuing bribery, fraud

as well as procurement irregularities come as no surprise and therefore it could rightfully be asked whether corruption has taken a turn for the worse in the South African public sector.

## 5. Recommendations and concluding remarks

From the discussion it is clear that corruption is not only a critical threat to the delivery of basic services and good governance, but it also hampers development and impedes growth initiatives and diverts resources from where they are needed.  While good governance refers to the ideal of any government, corruption is a scourge that any government needs to combat as it destroys good governance.  It is evident that the South African government follows **a multi-anti-corruption approach that includes a well-developed and comprehensive legislative and regulatory framework to combat corruption.**  However, the South African anti-corruption legislative and regulatory framework does not seem to function optimally in that ongoing reports of, amongst others, irregular, unauthorized and fruitless and wasteful expenditure, tender irregularities, incidents of ongoing bribery, corruption and fraud continue to be released.  A number of factors that contribute to the inefficiency of anti-corruption agencies were discussed, such as inefficiencies due to overlapping mandates within and between institutions with anti-corruption mandates, the ineffective application of the disciplinary system, underdeveloped management capacity, the failure of national and provincial departments to submit reports, or incomplete report, on financial misconduct, the failure to allocate adequate resources to combating corruption; and the lack of political will to fight corruption, especially when high profile figures are involved in corruption.

This article argues that although South Africa does not follow a single-agency approach much can be learnt from the critical factors that contribute to the success of international anti-corruption models that combat corruption effectively.  Some of the critical factors include the following: the success of an anti-corruption agency depends to a large extent on competent staff with specialised competencies and skills; the promotion of effective coordination between all of the anti-corruption mechanisms; an anti-corruption agency should have strong prevention of corruption capabilities, as well as a strong research capability, along with a comprehensive

investigatory authority. The article further argues that the South African government should seriously investigate the possibility of establishing an effective **single anti-corruption agency** with extensive powers as the current multi-agency approach is not very effective in combating corruption. Additional recommendations that should be considered in order to strengthen and promote the effectiveness of the South African multi-anti-corruption agency approach are the following:

- There is an urgent need to address the overlapping mandates of the current anti-corruption agencies effectively; ensuring that the independence of each agency is maintained in that each agency has it own mandate to fight corruption effectively;
- The coordination and cooperation between the multi-anti-corruption agencies need to be improved;
- Improvement of the collaboration between all stakeholders to ensure the effective implementation of the overall anti-corruption strategy in the public service and at local sphere;
- The best laws have no value if they are not enforced. Therefore capacity and integrity of law enforcement need to be enhanced;
- Measures to improve and speed up the investigation of financial misconduct cases in all three spheres of government should be considered;
- The success of an anti-corruption agency depends on sufficient staff with specific knowledge and skills as well as sufficient resources;
- The internal capacity of government departments and local sphere to combat corruption should be strengthened through the establishment of effective internal audit capabilities, improved internal controls and monitoring;
- The continuous strengthening and improvement of the mechanisms through which cases of corruption can be reported such as the National Anti-Corruption Hotline;
- The use of technology to detect and prevent corruption should be explored on a continuous basis;
- Greater emphasis on preventing corruption through public education initiatives;
- Strengthening the protection of whistle-blowers, as an independent media has an important role to play in public awareness;

- Consider management control measures to ensure that reports submitted to the PSC are accurate and timeously;
- Provide ethical training to all public officials on a continuous basis; and
- Improve internal control measures to safeguard assets. More should be done to recover the amounts that were lost due to financial misconduct.
  (Anon, 2011: 404; DPSA, 2008:25-26; PSC 2007:x-xi).

## Bibliography

ANON. 2008. Role of Public Accounts Committee in Ensuring Effective Municipal Governance. Parliament Research Unit. Available: www.parliament.gov.za research unit/role of a public accounts committee/pdf. (Accessed: 30 March 2009).

ANON. 2009. Gauteng Anti-Corruption Strategic Framework. Available: http:www.gauteng onlinen.gov.za/pdf. (Accessed: 06 March 2012).

ANON. 2010. Municipal Services in Array. *The Daily Sun.* 05 March 2010.

ANON. 2011. Business Anti-Corruption. Public Anti-Corruption Initiatives. Available: http://www.business-anti corruption.com/country-profiles/html. (Accessed 07 March 2012).

ANON. 2011. Promoting Accountability and Fighting Corruption. Available: http://www.gov.za.documents/corruption/pdf. (Accessed: 13 February 2012).

ANON. 2012. National Anti-corruption Forum. Available at: http://www.nacf.org/government_index.html (Accessed: 23 April 2012).

CAMERER, L. 1999. Tackling the Multi-Headed Dragon- Evaluating prospects for a single anti-corruption agency in South Africa. Institute for Security Studies Occasional Publication. Available at: org.za/government/index.html. (Accessed: 13 February 2012).

CAPE ARGUS, 27 January 2012. Available at: http://www.iol.co.za/capeargus/corruption-watch-wins-backing-of-anc-1.1221755 (Accessed: 29 November 2012).

EDWARDS, T. 2007. Ethical fitness for accountable public officials: An imperative for good governance. *Journal of Public Administration,* 42(5):28-34.

EDWARDS, T. 2009. Promoting good governance in the local government sphere through leadership. *Journal of Public Administration,* 44(3.2):47-56.

GAUTENG PROVINCIAL GOVERNMENT. 2009. Gauteng Anti-Corruption Strategic Framework. Available http://gautengonline.gov.za/Publications/anti-corruption report pdf. (Accessed: 06 March 2012).

HEILBRUNN, J.R. 2004. Anti-Corruption Commissions Panacea or Real Medicine to Fight Corruption. Available: http://www.worldbank.org/recourses/Heilbrunn.pdf (Accessed: 14 February 2012).

KLEMENČIČ, G & STUSEK, J. 2006. Specialised Anti-Corruption Institutions. Review of Models. Avaialable: www.oecd.org/publishing. (Accessed: 13 February 2012).

KROUKAMP, H. 2006. Corruption in South Africa with particular reference to public sector institutions: The evil of all evils. *Journal of Public Administration,* 41(2.1): 206-217.

LABUSCHAGNE, H. & ELS, G. 2006. Corruption and Fraud: Any lessons for the Auditor? *Meditari Accountancy Research,* Vol. 14 No. 1. p 29-47

MADONSELA, T.N. 2010. Public Protector South Africa. Corruption and Governance Challenges: The South African Experience. Article presented at the National Conference on Corruption and Governance Challenges, Nigeria 21 January 2010.

MAFUNISA, M.J. 2007. Corruption and service delivery in the public service: The case of Limpopo Province. *Journal of Public Administration,* 42(3): 260.

MANYATHI N. 2012. New Anti-Corruption Watchdog Launched. De Rebus. *The South African Journal of the Law Society*. March:6-7

MEAGHER, P. & Voland, C. 2006. Anti-Corruption Agencies. United States Agency for International Development. University of Maryland: IRS Centre.

MGIJIMA, R. 2010. State of professional ethics in the public service post 1994. *News Official Magazine of the Public Service Commission.* November/December 2010. p3-8

NEWS24. 17 March 2011. Available at: http://www.news24.com/SouthAfrica/News/ConCourt-slams-disbanding-of-Scorpions-20110317 (Accessed: 23 April 2012).

PAUW, J.C., WOODS, J., VAN DER LINDE, G.J.A., FOURIE, D. & VISSER, J. 2009 (Second edition). *Managing Public Money. Systems from the South.* Heineman Publishers (Pty) Ltd. Johannesburg.

PILLAY, S. 2004. Corruption-The Challenge to Good Governance: A South Africa perspective. *The International Journal of Public Sector Management*, 17(6/7):586-605.

RUHIIGA, T.M. 2009. Costing the Impact of Corruption on Service Delivery in South Africa: An Exploratory Overview. *Journal of Public Administration,* 44(4):1090-1101.

SLABBERT, A. 2011. Munisipale oudits wys miljarde gaan verlore. *Volksblad*, 30 Junie 2011.

SOUTH AFRICA. 1994. *National Strategic Intelligence Act,* Act 39 of 1994. Pretoria: Government Printers.

SOUTH AFRICA. 1996. *Constitution of the Republic of South Africa.* Pretoria: Government Printers.

SOUTH AFRICA. 1998. *Prevention of Organised Crime Act,* Act 121 of 1998. Pretoria: Government Printer.

SOUTH AFRICA. 1998. *The Executive Members Ethics Act,* Act 82 of 1998. Pretoria: Government Printers.

SOUTH AFRICA. 1998. Local Government Municipal Systems Act, Act 32 of 1998. Pretoria: Government Printer.

SOUTH AFRICA. 1999. *Public Finance Management Act,* Act 1 of 1999. Pretoria: Government Printer.

SOUTH AFRICA. 2000. *The Promotion of Access to Information Act,* Act 2 of 2000. Pretoria: Government Printer.

SOUTH AFRICA. 2000. *Promotion of Administrative Justice Act,* Act 3 of 2000. Pretoria: Government Printer.

SOUTH AFRICA. 2000. *The Protected Disclosures Act,* Act 26 of 2000. Pretoria: Government Printer.

SOUTH AFRICA. 2001. *A Review of South Africa's National Anti-Corruption Agencies.* Pretoria: Government Printer.

SOUTH AFRICA. 2001*. Financial Intelligence Centre Act,* Act 38 of 2001. Pretoria: Government Printer.

SOUTH AFRICA. 2001*. Public Service Regulations (as amended).* Government Notice No. R. 1 of 5 January 2001.

SOUTH AFRICA. 2002. Department of Public Service and Administration. Public Service Anti-Corruption Strategy. Pretoria: Government Printer.

SOUTH AFRICA. 2003. Department of Public Service and Administration. Country Corruption Assessment Report South Africa. Pretoria: Government Printer.

SOUTH AFRICA. 2003. *Municipal Finance Management Act,* Act 56 of 2003. Pretoria: Government Printer.

SOUTH AFRICA. 2004. *Prevention and Combating of Corrupt Activities Act,* Act 12 of 2004. Pretoria: Government Printer.

SOUTH AFRICA. 2004. *Public Audit Act,* Act 25 of 2004. Pretoria: Government Printers.

SOUTH AFRICA. 2007. *Public Service Amendment Act,* Act 30 of 2007. Pretoria: Government Printers.

SOUTH AFRICA. 2007. Public Service Commission. Report on Financial Misconduct for the 2005/2006 Financial Year. Pretoria: Milk Brown Design & Communications.

SOUTH AFRICA. 2008. Department of Public Service and Administration. Assessing the effectiveness of the National Anti-Corruption Framework. Available at: http://www.theprecidency/ gov.za. docs/15 year-anti-corruption/html (Accessed: 13 February 2012).

SOUTH AFRICA. 2008. Public Service Commission Report on Financial Misconduct for the 2006/2007 Financial Year. Available: www.psc.gov.za.documents.

SOUTH AFRICA. 2009. National Anti-Corruption Forum. Perspectives of Anti-Corruption Initiatives in South Africa. Available at: http://www.nacf.org.za/government/index.html (Accessed 13 February 2012).

SOUTH AFRICA. 2011. Public Service Commission. Report on Financial Misconduct for the 2008/2009 Financial Year. Pretoria: Milk Brown Design & Communications. or available: www.psc.gov.za.documents.

SOUTH AFRICA, 2011. Public Service Commission. Report on Profiling and Analysis of the Most Common Manifestations of Corruption and its Related Risks in the Public Service. Pretoria: Government Printer.

SOUTH AFRICA. 2012. Public Service Commission Report on Financial Misconduct for the 2010/2011 Financial Year. Available: www.psc.gov.za.documents. 2012/pdf.

TOLSI, N. 2010. South Africa: Damning corruption report. *Mail and Guardian Online*, 29 October 2010.

TRANSPARENCY INTERNATIONAL. 2011. Corruption Perception Index. Available at: www.transparency org. (Accessed: 30 January 2012).

VISSER, J. 2006. Local Accountability: Enforcing the Code of Conduct for Councillors. Available: http:www.community/lawcentre.org.za/Projects/Local-Government. (Assessed: 5 September 2008).

VYAS-DOORGAPERSAD, S. 2010. The illusion of ethics for good local governance in South Africa. *The Journal for Transdisciplinary research in South Africa,* 6(2): 411-427.

WEBB, W. 2008. A Caveat on Public Management Reform and Corruption Prevention. *Journal of Public Administration,* 43(4): 592-606.